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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1135**

Shonwta Demar Jackson,
Relator,

vs.

Commissioner of Human Services,
Respondent.

**Filed June 4, 2018
Affirmed
Florey, Judge**

Minnesota Department of Human Services
License No. 1077904

Mary F. Moriarty, Chief Hennepin County Public Defender, Peter W. Gorman, Assistant Public Defender, Minneapolis, Minnesota (for relator)

Lori Swanson, Attorney General, Gail A. Feichtinger, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Larkin, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Relator appeals respondent's denial of his request for reconsideration or to set aside his disqualification from providing direct-care services. Relator argues that respondent acted arbitrarily, capriciously, and without sufficient evidence in refusing to rescind the

disqualification. He also argues the Minnesota Department of Human Services Background Studies Act, Minn. Stat. §§ 245C.01-.34 (2016) (Background Studies Act), and respondent's actions under the act, violate his due-process rights, the separation-of-powers doctrine, and the rules of evidence. We affirm.

FACTS

In 2010, Model Health Care Inc. submitted a background-study request to respondent Minnesota Commissioner of Human Services for relator Shonwta Demar Jackson. As part of the background study, respondent requested records related to a termination of relator's parental rights. The records revealed that, in 2002, relator's 12-year-old son accused relator of physical and sexual abuse that occurred when the child was eight or nine years old. A child-protection investigation was opened, and the investigation resulted in a finding of maltreatment on the basis of physical and sexual abuse. A 2003 petition to terminate relator's parental rights indicated that the report of sexual abuse had been substantiated. In 2004, relator's parental rights to five of his six children were *voluntarily* terminated.

Based on the information contained in the records, respondent concluded that relator was disqualified from positions allowing direct contact with persons receiving services from programs licensed by respondent. Specifically, respondent concluded that relator was disqualified under Minn. Stat. § 245C.14, subd. 1(2), for committing an act which met the definition of first-degree criminal sexual conduct. A letter was sent to respondent in July 2010 informing him of the disqualification and his ability to request reconsideration within 30 days of receiving the letter.

In January and May 2012, two other companies requested background studies on relator. Respondent notified relator after both requests that he was disqualified because “there is a preponderance of evidence that on or around 1998, [relator] committed an act which meets the definition of a disqualifying characteristic.”

In July 2016, Park Avenue Center on Nicollet requested a background study on relator. On February 28, 2017, respondent sent a letter to relator informing him that he is permanently disqualified because he committed first-degree criminal sexual conduct on or around 1998 and because his parental rights were *involuntarily* terminated in 2004.

In March 2017, an attorney for relator requested reconsideration of the disqualification. He argued that relator voluntarily terminated his parental rights and was never convicted of criminal sexual conduct. On June 15, 2017, respondent affirmed relator’s disqualification. Respondent stated that, because relator was previously notified of the disqualification in 2010 and 2012 and did not request reconsideration at those times, the “correctness of [the] disqualification became conclusive under Minnesota Statutes, section 245C.29, subdivision 2.”

In July, respondent issued a letter superseding the June 15 letter. Respondent affirmed the disqualification for acts constituting first-degree criminal sexual conduct but found that the information used to disqualify relator on the ground of an involuntary termination was incorrect. Respondent rescinded that basis for disqualification. Respondent again indicated that the “correctness of [relator’s] disqualification became conclusive” after he failed to challenge the disqualification in 2010 and 2012.

This certiorari appeal followed.

DECISION

The parties agree that the case is not subject to the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2016). MAPA only applies to an agency's final decision in a "contested case." Minn. Stat. § 14.63. A "contested case" is "a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing." Minn. Stat. § 14.02, subd. 3. A person is not entitled to an agency hearing when a person is conclusively disqualified. Minn. Stat. §§ 256.045, subd. 3b(c) (Supp. 2017), 245C.27, subd. 1. Under Minn. Stat. § 245C.29, subd. 2(a)(2), relator is conclusively disqualified and is therefore not entitled to an agency hearing.

When considering an agency's quasi-judicial decision that is not subject to MAPA, this court examines "the record to review questions affecting the jurisdiction of the agency, the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012) (quotation omitted), *review denied* (Minn. Apr. 17, 2012). When reviewing agency decisions, we "adhere to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001) (quotation omitted).

Under the Background Studies Act, a person seeking employment in certain licensed facilities who will be providing direct-contact services must submit to a

background study. Minn. Stat. § 245C.03, subd. 1(a)(3). A person is permanently disqualified from providing direct-contact services if the person has been convicted of one or more listed crimes or it is established by a preponderance of the evidence that the person committed an act that meets the definition of one of those crimes. Minn. Stat. §§ 245C.14, subd. 1, .15, subd. 1. Included in the list of permanently disqualifying crimes are all degrees of criminal sexual conduct. Minn. Stat. § 245C.15, subd. 1(a) (including Minn. Stat. §§ 609.342-.3451 (2016)). A disqualified individual may request reconsideration within 30 days of a disqualification decision. Minn. Stat. § 245C.21, subd. 2. But respondent may not set aside a disqualification if the individual was permanently disqualified for conduct listed in section 245C.15, subdivision 1. Minn. Stat. § 245C.24, subd. 2.

I. The 2010 disqualification is conclusive and permanent and controls the 2017 disqualification.

Relator argues that respondent acted arbitrarily, capriciously, and without sufficient evidence in refusing to reconsider or set aside the disqualification in 2017. Respondent argues that relator's challenge fails because the 2010 disqualification is conclusive and applies to all future background studies. Relator does not deny that he failed to request reconsideration in 2010 and 2012, but argues that this appeal is solely limited to the 2017 disqualification.

Minn. Stat. § 245C.29, subd. 2(a)(2) states, "A disqualification is conclusive for purposes of current and future background studies if . . . the individual did not request reconsideration of the disqualification under section 245C.21 on the basis that the

information relied upon to disqualify the individual was incorrect” In *Smith v. Minn. Dept. of Human Servs.*, this court considered whether a relator was barred from challenging a permanent disqualification that was conclusive under Minn. Stat. § 245C.29. 764 N.W.2d 388, 390-92 (Minn. App. 2009). The relator was disqualified from services in 2006 and 2007 and failed to timely challenge the determinations. *Id.* at 391. This court concluded that the relator was “conclusively permanently disqualified” because of his failure to challenge either determination in a timely fashion. *Id.* at 392. Because the challenge that was ultimately made was untimely, and thus barred, the department’s action “was not arbitrary, unreasonable, oppressive, fraudulent, made under an error of law, or unsupported by the evidence.” *Id.*

Our decision in *Smith* supports our conclusion that relator is barred from challenging the merits of respondent’s disqualification decision. Relator received three notices of a disqualification in 2010 and 2012. He failed to timely request reconsideration of the 2010 disqualification under Minn. Stat. § 245C.21. Therefore his disqualification became conclusive for all future background studies, and he is procedurally barred from challenging the 2017 disqualification decision.

II. Respondent’s decision is supported by substantial evidence and is not arbitrary or capricious.

Even if the prior disqualifications did not render relator’s 2017 disqualification conclusive, we would conclude that respondent’s decision is supported by substantial evidence and is not arbitrary or capricious.

This court may reverse an agency decision if it is not supported by substantial evidence or is arbitrary and capricious. *Rodne v. Comm’r of Human Servs.*, 547 N.W.2d 440, 444-45 (Minn. App. 1996). An agency’s decision is not arbitrary and capricious if there is a “rational connection between the facts found” and the agency’s decision. *Blue Cross*, 624 N.W.2d at 277 (quotation omitted). We will affirm an agency’s findings if they are supported by substantial evidence in view of the entire record submitted. *White v. Minn. Dep’t of Nat. Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997).

Relator cites to this court’s recent decision in *A.A.A. v. Comm’r of Human Servs.*, No. A17-0370, 2017 WL 4872771, at *1 (Minn. App. Oct. 30, 2017), to support his position that the evidence was not sufficient to overcome relator’s denial of any sexual conduct. Generally, unpublished opinions of this court are not precedential but may hold some persuasive value. Minn. Stat. § 480A.08, subd. 3(c) (2016); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993). In *A.A.A.*, this court reversed an agency’s conclusion that a preponderance of the evidence established that the relator committed a disqualifying act, where the agency based its decision on a one-page probable-cause statement contained in a 2008 criminal complaint. 2017 WL 4872711, at *2. The complaint was dismissed 24 days later, and arrest records were later expunged. *Id.* at *1-2. This court held that the preponderance of the evidence was not met because of a “lack of evidence, and [a] dearth of any supporting records, reports, or documentation.” *Id.* at *2.

Relator's disqualification is distinguishable from A.A.A. because respondent had additional records and documentation to support its decision. Notes from a child-protection case indicate that relator's son relayed nearly identical stories of forcible sexual penetration in his initial report and his CornerHouse interview. The notes indicate that a finding of sexual abuse was substantiated by a preponderance of the evidence and that maltreatment was found.¹ A petition to terminate relator's parental rights indicates that maltreatment was substantiated based on the June 2002 report, and "[a] CornerHouse interview determined [relator's son] was sexually and physically abused by his parents." Because of the reports, the children were adjudicated in need of protection or services. In the same juvenile-protection case, relator voluntarily terminated his parental rights to five of his six children. These documents provide substantially more information than that which was before this court in A.A.A. Respondent has provided sufficient evidence to support its determination. The decision to disqualify respondent was not arbitrary or capricious.

III. Relator's constitutional and evidentiary claims are without merit.

Appellant argues that respondent violated (1) his due-process rights; (2) the separation-of-powers doctrine; and (3) the rules of evidence.

¹ The regulations promulgated by the Minnesota Department of Human Services require local agencies investigating reports of maltreatment within a family unit to base a maltreatment determination on a preponderance of the evidence. Minn. R. 9560.0220, subp. 6(A)(1) (2017); *see* Minn. Stat. § 626.556, subd. 10e(e)-(g) (2016) (requiring determinations of maltreatment by a local agency to be based on a preponderance of the evidence, and defining maltreatment, in part, as any act which constitutes a violation of Minn. Stat. §§ 609.342-.3451).

A. Due process

Relator argues “the manner in which [respondent] implemented the disqualification statute” deprives him of his good name and ability to work in his chosen field. “The constitutionality of a statute is a question of law that we review de novo.” *SooHoo v. Johnson*, 731 N.W.2d 815, 821 (Minn. 2007). “[W]e will uphold a statute unless the challenging party demonstrates that it is unconstitutional beyond a reasonable doubt.” *Id.*

The United States and Minnesota Constitutions guarantee the right to due process. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. Due-process protections restrain a government from actions that deprive a person of liberty or property and “include reasonable notice, a timely opportunity for a hearing, the right to be represented by counsel, an opportunity to present evidence and argument, the right to an impartial decisionmaker, and the right to a reasonable decision based solely on the record.” *Humenansky v. Minn. Bd. of Med. Exam’rs*, 525 N.W.2d 559, 565 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). But full due-process protections do not apply to the quasi-judicial proceedings of an agency. *In re North Metro Harness, Inc.*, 711 N.W.2d 129, 136 (Minn. App. 2006). “The due-process rights required are simply reasonable notice of a hearing and a reasonable opportunity to be heard.” *Id.* (quotation omitted).

Under the procedural due-process test articulated in *Mathews v. Eldridge*, this court considers (1) the private interest that is affected by official action; (2) the risk of an erroneous deprivation of the interest through the procedures used, and the value of additional or substitute procedural safeguards; and (3) the government’s interest, including the burdens the substitute procedure would entail. 424 U.S. 319, 335, 96 S. Ct. 893, 903

(1976). After balancing the individual's interests and the agency's interests, we determine whether due process requires additional or different procedures. *Schulte v. Transp. Unlimited, Inc.*, 354 N.W.2d 830, 832 (Minn. 1984).

An individual "has a protected property interest in holding direct-care positions in state-licensed facilities." *Anderson*, 811 N.W.2d at 167. "Employment in an individual's chosen field is significant and weighs heavily in the individual's favor." *Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 320 (Minn. App. 2005), *review denied* (Minn. Nov. 15, 2005). Likewise, a person has a protected liberty interest in protecting his reputation and associations in the community. *Fosselman v. Comm'r of Human Servs.*, 612 N.W.2d 456, 461 (Minn. App. 2000). However, this court has previously stated that "the governmental interest in protecting the public, especially vulnerable individuals . . . is of paramount importance." *Sweet*, 702 N.W.2d at 321. "The government also has an interest in saving time and money by reconsidering disqualifications quickly and efficiently" *Id.*

Relator was provided with an opportunity to request reconsideration of the initial disqualification in 2010. Had he done so, he would have had the opportunity for a hearing and to present argument and evidence for why he should not be disqualified. *See* Minn. Stat. §§ 256.045, subd. 3(a)(10) (Supp. 2017), 245C.27, subd. 1(a). He was therefore provided an opportunity to challenge the agency's action that has led to the deprivation of his ability to work in his chosen field. He did not do so. "[T]here is no due process violation if an aggrieved party fails to take advantage of an appeal process." *Smith*, 764 N.W.2d at 392.

Relator also argues that Minn. Stat. § 245C.29 creates a permanent, irrebuttable presumption of disqualification that will inhibit his ability to work in his chosen field for life. He cites *Vlandis v. Kline*, 412 U.S. 441, 93 S. Ct. 2230 (1973), for the proposition that a person's due-process rights are violated by an irrebuttable statutory presumption. But *Vlandis* considered a Connecticut statute that classified a student as a nonresident for the entire period the person attended a state university and did not permit the classification to be rebutted. 412 U.S. at 442-43, 93 S. Ct. at 2231-32. The Supreme Court held that the statute violated the students' rights to due process because it did not allow the students an opportunity to present evidence that they are bona fide Connecticut residents. *Id.* at 452-53, 93 S. Ct. at 2237. *Vlandis* is not applicable here because relator was provided an opportunity to rebut the initial disqualification. He simply failed to do so. The conclusive nature of the unchallenged disqualification does not violate relator's right to due process.

B. Separation of powers

Relator argues that the Background Studies Act “removes from the judiciary the power to adjudicate guilt for a crime and the power to punish.” The separation-of-powers doctrine generally prohibits each branch of government from intruding upon another branch's unique constitutional functions. *State v. T.M.B.*, 590 N.W.2d 809, 812 (Minn. App. 1999), *review denied* (Minn. June 16, 1999). The judicial branch will “exercise restraint when presented with a possible separation of powers conflict between the branches” and “give due consideration to the equally important executive and legislative functions.” *Ninetieth Minn. State Senate v. Dayton*, 903 N.W.2d 609, 623 (Minn. 2017) (quotations omitted).

In *Riley v. Jankowski*, this court considered whether an administrative-hearing process violated the separation-of-powers doctrine where an administrative-law judge determined whether statutory provisions had been violated. 713 N.W.2d 379, 386 (Minn. App. 2006), *review denied* (Minn. July 19, 2006). In reasoning that the agency did not usurp the power of the courts to decide criminal cases, we noted that the statute required a lower standard of proof than proof beyond a reasonable doubt. *Id.* at 391. This court also held that an administrative-hearing process did not violate the separation-of-powers doctrine “when a decision rendered in the administrative process is subject to judicial review.” *Id.* at 394.

Here, the original administrative decision was subject to judicial review, either on appeal to this court by writ of certiorari, or through an appeal to the district court. *See* Minn. Stat. § 256.045, subd. 7 (2016). Likewise, it requires a lower standard of proof than a criminal proceeding. Thus, the doctrine of separation of powers has not been violated.

C. Hearsay

Relator argues that respondent solely relied on uncorroborated hearsay when concluding that he committed an act which meets the definition of first-degree criminal sexual conduct. In *State ex rel. Indep. Sch. Dist. No. 276 v. Dep’t of Ed.*, the supreme court stated that “[t]he general rule is that in the absence of a special statute, an administrative agency cannot, at least over objection, rest its findings of fact solely upon hearsay evidence which is inadmissible in a judicial proceeding.” 256 N.W.2d 619, 627 (Minn. 1977) (quotation omitted). The supreme court clarified,

[I]t is reasonable to assume that the commissioner is in a position to judge the inherent trustworthiness and reliability of the evidence before him. Since the formal hearing requirement is not to be imposed on the Department in cases of this nature, it would not be consistent to require strict compliance with the rules of evidence. Only where it appears that the Department clearly abused its discretion in relying upon inherently unreliable evidence, under the hearsay rule or otherwise, should the courts intervene.

Id. Appellant did not previously challenge the trustworthiness of the evidence relied upon by respondent in the prior background studies. Nor did he previously request reconsideration or a hearing, during which he could have challenged the evidence proffered by respondent and offered his own evidence. We do not conclude that respondent clearly abused its discretion in relying on the unopposed evidence before it.

Affirmed.